



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

November 22, 2010

TO: All County Assessors
2010 Senior Levy Webinar Participants

FROM: Diann Locke, Specialist – Levies, Collections & Appeals
Property Tax Division

SUBJECT: QUESTIONS FROM THE 2010 SENIOR LEVY WEBINAR

Diann Locke

During the 2010 Senior Levy Webinar, a couple of questions were asked that required additional research. Here are answers to those questions.

Q. An assessor discovers an annexation that occurred a couple of years ago. Because the assessor was unaware of the annexation, the taxing district's levy limit was not increased. Can the assessor now increase the levy limit to reflect the annexation?

*A. Maybe. RCW 84.55.030 only allows an increase in the levy limit **in the first year** following an annexation. So, no increase may be made under that statute. However, if the missed annexation resulted in all of the taxpayers in the district paying an incorrect amount, it can be corrected under the provisions of RCW 84.52.085 (the levy error correction statute). However, the error cannot be corrected if it occurred more than three years preceding discovery.*

Q. A library district covers the unincorporated area in a county. If a city disincorporates, does that territory automatically become part of the library district?

A. No. There is no statutory provision allowing the library district to include the area of the disincorporated city without going through an annexation process.

Additionally, there was much discussion about new construction. The following questions and answers are intended to provide guidance with respect to assessment of new construction and its treatment with respect to the levy limit.

Q. What is "new construction"?

A. "New construction" is defined in RCW 36.21.080 as "any property that is increased in value due to construction or alteration for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits...."

Q. If a building permit is not issued, does it still count as new construction?

A. Maybe. If a building permit should have been issued, but the property owner did not obtain one, the new structure would meet the definition of new construction. If, however, no building permit is

required, the new structure would not be considered new construction. More information is available on this topic in a Special Notice issued September 29, 2008. The Special Notice is available at this link: http://dor.wa.gov/Docs/Pubs/SpecialNotices/2008/sn_08_Assessment.pdf.

Q. Does it create a uniformity problem if some counties or jurisdictions require building permits for certain types of structures while other jurisdictions don't?

A. No. Uniformity requires all real property to be taxed at the same level. The structure is subject to assessment regardless of whether or not a building permit is required. And all properties within a jurisdiction must be taxed at the same level. Therefore, uniformity is not violated simply because of different permitting requirements.

However, the structure that did not require a building permit is not treated as "new construction" for assessment purposes. That means that it is valued as of January 1st instead of July 31st. Also, because it is not "new construction," the value of the structure is not used to increase the levy limit.

Q. Are new plats considered new construction?

A. No. Because a new plat does not require a building permit, it would not be considered new construction. However, it may be considered an improvement to property. WAC 458-19-005 defines an improvement as "any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property." Even though new plats are not considered new construction, the additional value may be added to the levy limit calculation as an improvement to property.

Q. Can newly added personal property qualify as new construction?

A. According to WAC 458-12-342, new construction refers only to real property. However, the rule goes on to include improvements "located on leased public land, for which a building permit was issued or should have been issued pursuant to chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits" as new construction. Improvements on leased public land are statutorily defined as personal property. However, this type of personal property may be treated as new construction.

Q. Does new construction include machinery and equipment?

A. It depends on the situation at hand. If the machinery and equipment is considered real property and its installation requires a building permit as noted in RCW 36.21.080, the machinery and equipment may be considered new construction. However, if the machinery and equipment did not require a building permit, then it would not be considered new construction and may not be used to increase the levy limit.

Q. Should a newly-constructed improvement that belongs to a government entity be treated as new construction?

A. The improvement would be valued as of July 31 and listed on the assessment roll. However, because the improvement is exempt, the value is not used to increase the levy limit. RCW 84.55.010 allows an increase in the levy limit based on the assessed value of new construction. According to

RCW 84.04.030, "assessed value" means the value subject to taxation. Therefore, only the value of taxable new construction is used to increase the levy limit.

Q. When can new construction be added to the assessment roll?

A. RCW 36.21.080 directs the assessor to value the property as of July 31 and authorizes the assessor to place the value of new construction on the assessment rolls up until August 31. WAC 458-12-342 provides further guidance and states in part, "[new construction] shall be assessed at its true and fair value as of July 31st each year regardless of its percentage of completion. In instances when new construction continues after July 31 of any year, the increase in value of the property due to the new construction that occurs between August 1 of that year through July 31 of the following year is added to the assessment roll as "new construction" in the following year."

Q. What is the significance of the August 31st date?

A. The property tax system is generally designed to follow an orderly process. The statutory dates for the various components of the property tax system work like this:

May 31st – Assessments are completed

July 15th through August 12th – The BOE meets to hear appeals

August 31 – New construction is added to the assessment roll

September – DOR calculates ratios, certifies utility values, and assessors certify values to taxing districts

November – Taxing districts certify levy amounts to the County Legislative Authority

December/January – Assessors calculate levy rates and certify the tax rolls to the treasurers

Having the new construction values completed by August 31 keeps the orderly flow of the property tax system moving. Until new construction is completed, ratios cannot be calculated. Without ratios, utility values cannot be certified. If the value of new construction and equalized utility values are not available, taxing districts do not have all of the information that is important in setting budgets.

Q. Didn't the Supreme Court say that the August 31st date is directory rather than mandatory?

A. Not with respect to new construction. In Niichel v. Lancaster, the Supreme Court found that in several statutes related to the timing of the assessment process, the word "shall" is directory rather than mandatory. RCW 36.21.080, the statute that relates to new construction, is not among the laws specifically mentioned in that case. If challenged, there is a reasonable chance that a court would find the dates contained in the new construction statute are directory. However, at this point, there is no case law making the new construction dates directory only.

Q. If a new structure was built in March 2009, but the assessor did not discover it until May 2010, can it still be added as new construction?

A. RCW 84.40.040 requires property to be listed each year. In this case, the structure should have been listed in 2009 as new construction with a valuation date of July 31st. However, the structure was missed. When discovered in 2010, it should be added to the assessment roll with a valuation date of January 1, 2010. (Depending on specific circumstances, the structure may be included as omitted property for 2009 under RCW 84.40.080.)

The structure is not considered “new construction” with respect to the valuation date. Therefore, it is not considered “new construction” for levy calculation purposes.

Questions

If you have questions or need additional information, please contact Diann Locke at (360) 534-1427 or DiannL@dor.wa.gov.

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